

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED

FEB - 5 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
)

Implementation of the Pay Telephone )

Reclassification and Compensation )

Provisions of the Telecommunications )

Act of 1996 )  
)

CC Docket No. 96-128

To: Chief, Common Carrier Bureau

REPLY COMMENTS OF THE  
AMERICAN PUBLIC COMMUNICATIONS COUNCIL  
ON MOTION TO DEFER THE EFFECTIVE DATE OF THE VERIFICATION  
REQUIREMENT AND ON REQUESTS FOR FURTHER WAIVERS  
OF THE PAYPHONE-SPECIFIC DIGITS REQUIREMENT

Albert H. Kramer  
Robert F. Aldrich  
DICKSTEIN SHAPIRO MORIN  
& OSHINSKY LLP  
2101 L Street, N.W.  
Washington, DC 20037-1526  
(202) 828-2226

Attorneys for the American Public  
Communications Council

February 5, 1999

No. of Copies rec'd 014  
List A B C D E

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

---

In the Matter of )

Implementation of the Pay Telephone )  
Reclassification and Compensation )  
Provisions of the Telecommunications )  
Act of 1996 )

---

CC Docket No. 96-128

To: Chief, Common Carrier Bureau

**REPLY COMMENTS OF THE  
AMERICAN PUBLIC COMMUNICATIONS COUNCIL  
ON MOTION TO DEFER THE EFFECTIVE DATE OF THE VERIFICATION  
REQUIREMENT AND ON REQUESTS FOR FURTHER WAIVERS  
OF THE PAYPHONE-SPECIFIC DIGITS REQUIREMENT**

Pursuant to the Common Carrier Bureau's Order, DA 98-2644, released December 31, 1998, the American Public Communications Council ("APCC") submits the following reply to comments on (1) the requests of GTE, Southern New England Telephone ("SNET"), Southwestern Bell ("SBC"), and U S West for further waivers of the payphone specific digits requirement and (2) APCC's motion to defer the effective date of the call tracking verification requirement of the Payphone Orders.<sup>1</sup>

---

<sup>1</sup> Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Report and Order, 11 FCC Rcd 20541 (1996); ("1996 Order"), recon., 11 FCC Rcd at 21233 (1996) ("1996 Reconsideration"), affirmed in part and vacated in part, Illinois Public Telecom. Ass'n v. FCC, 117 F.3d 555 (D.C. Cir. 1997), on remand, Second Report and Order, 13 FCC Rcd 1778 (1997) ("1997 Order"), remanded, MCI Telecomm. Corp. v. FCC, No. 97-1675 (D.C. Cir. May 15, 1998) (together the "Payphone Orders").

**I. INDEPENDENT PSPs SHOULD NOT INCUR ANY PENALTY FROM LEC NON-COMPLIANCE WITH CODING DIGIT REQUIREMENTS**

In its comments on the coding digit waiver requests, the International Telecard Association (“ITA”) “opposes any further delay in enforcement of the Commission’s coding digit rules for noncompliant *PSPs*.” Comments of ITA at 1 (emphasis added). Indeed, throughout its comments, ITA characterizes the coding digit problem as a “failure” on the part of *payphone service providers* (“*PSPs*”), and argues that this “failure” entitles prepaid card providers to a “temporary exemption” from paying *any* per-call compensation.

It is important to set the record straight. The Commission’s orders do state that, “to be eligible for compensation, payphones are required to transmit specific coding digits as part of their ANI.” Reconsideration Order, ¶ 64. However, in the very same paragraph the Commission makes clear that it is the *local exchange carriers* (“*LECs*”) who are responsible for implementing this requirement. LECs must “make available to PSPs, on a tariffed basis, such coding digits as a part of the ANI for each payphone.” *Id.* The fact that LECs have not fully complied with this requirement should in no way justify the denial of fair compensation to independent PSPs.

Independent PSPs are in no way responsible for LEC non-compliance with coding digit requirements. By subscribing to payphone lines, independent PSPs have taken all the steps they are required to take in order qualify for per-call compensation. An independent PSP cannot force the serving LEC to deploy or transmit FLEX ANI digits, nor can a PSP force a carrier to request FLEX ANI or to utilize the FLEX ANI digits they receive to track payphone calls. Accordingly, independent PSPs are entitled to fair compensation for all their payphones, including those affected by LEC non-compliance.

In particular, LEC non-compliance with respect to some payphones cannot justify a special compensation “exemption” for prepaid card providers. ITA at 5. The Commission’s rules are clear:

It is the responsibility of each carrier to whom a compensable call from a payphone is routed to track, or arrange for the tracking of, each such call so that it may accurately compute the compensation required by Section 64.1300(a).

47 CFR § 64.1310. Failing to track calls on payphones where FLEX ANI is available is a clear violation of the compensation rules.

Moreover, like other carriers, prepaid card providers have been on notice that, for payphones where FLEX ANI digits are unavailable, the carrier subject to compensation obligations may elect to compensate all such payphones on a flat-rate or (if feasible in the absence of FLEX ANI) per-call basis. Yet, instead of making this election, many prepaid card providers are trying to avoid paying any compensation at all. Failing to pay either per-call or flat-rate compensation on a payphone where FLEX ANI is not available is also a clear violation of the Bureau’s waiver orders.

AT&T argues that, whether or not the Commission grants additional LEC waivers, carriers “should not be obliged to incur additional expenses due to some LECs’ inability to comply with the Commission’s requirements.” AT&T Comments at 1. While AT&T’s concern is understandable, the Commission must not allow alleged LEC non-compliance to become an excuse for other carriers to avoid their call tracking obligations. Where FLEX ANI is available (and even where it is not, if the carrier has elected to pay compensation as a per-call basis), carriers must comply with the call-tracking rule. The Commission must not allow carriers to delay, defer, or play “After you, Alphone” games with, their requests for FLEX ANI service, as some carriers appear to be doing.

The Commission should reaffirm that LEC non-compliance does not operate to deprive any independent PSPs of its statutory right to fair compensation for each and every call. All carriers subject to compensation obligations must pay per-call compensation for all independent payphones where FLEX ANI is available, and must elect to pay either per-call or flat-rate compensation on all independent payphones where FLEX ANI is not yet available.

Finally, as APCC stressed in its initial comments, any waivers granted to LECs must be conditioned on the LEC's agreement to hold each affected PSP harmless for any shortfall in that PSP's receipt of per-call compensation.

## **II. APCC'S MOTION SHOULD BE GRANTED**

The comments on APCC's motion to defer the effective date of the Payphone Orders' call tracking verification requirement indicate that some parties may have misunderstood APCC's motion. APCC requested the Commission to defer the effective date of the verification requirement and to require carriers to perform verification of call tracking capabilities until the end of calendar year 1999. APCC Motion at 4. The purpose of APCC's motion is to ensure that the requirement for carriers to maintain documentation of their compliance with the call tracking requirement remains in effect, at a minimum, until there has been a full opportunity for the Commission and PSPs to assess such compliance, and until there is adequate confirmation that carriers actually are, and will remain, in compliance.

APCC did *not* intend to request any delay or waiver of any carrier's *compliance* with call tracking requirements. APCC intended only to request a deferral of the expiration of

the verification period, given the ample evidence that carriers – either because of their own failings or the LECs’ – have not yet fully complied with the call tracking requirements.

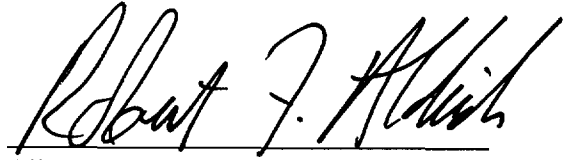
In its comments on APCC’s motion, ITA proposes that the Commission should “delay *enforcement* of IXC verification requirements until PSPs provide all carriers with the payphone-specific real-time information necessary for IXCs to identify and pay per-call compensation.” ITA at 3 (emphasis added). The Commission should *not* provide any delay in *enforcement*. PSPs currently need access to carrier records, as provided in the Payphone Orders, in order to confirm whether and how carriers can track calls. In this respect, we fully agree with PCIA that the Commission should not automatically accept any carrier’s affirmation that it has fully complied, and that verification documentation<sup>2</sup> is important now because it “will allow both PSPs and the Commission to determine the extent to which IXC tracking and payment activities comport with the Commission’s rules.” PCIA at 3. Thus, the Commission should not take any action that would prevent itself or PSPs from currently inspecting carriers’ compliance records pursuant to the rules. What the Commission *should* do is to defer the “sunset” of the verification requirement, at least until it can be confirmed that all carriers are and will remain in compliance.

---

<sup>2</sup> PCIA uses the term “verification reports.” Under the Payphone Orders, however, verification is not limited to the filing of reports with the FCC. Carriers are also required to maintain “verification documentation” of their call tracking capabilities, *i.e.*, “appropriate records” that are available for inspection by the FCC and PSPs on request. The Common Carrier Bureau Chief is authorized to establish the form and content, if necessary, of the verification documentation. Payphone Order, ¶101; Reconsideration Order, ¶ 96.

Dated: February 5, 1999

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert F. Aldrich", written over a horizontal line.

Albert H. Kramer

Robert F. Aldrich

DICKSTEIN SHAPIRO MORIN  
& OSHINSKY LLP

2101 L Street, N.W.

Washington, D.C. 20037-1526

(202)828-2226

Attorneys for the American Public  
Communications Council

## CERTIFICATE OF SERVICE

I hereby certify that on February 5, 1999, a copy of the foregoing Reply Comments of the American Public Communications Council on Motion to Defer the Effective Date of the Verification Requirement and on Requests for Further Waivers of the Payphone-Specific Digits Requirement was delivered by first-class U.S. Mail, postage pre-paid to the following parties:

Anna Gomez  
Federal Communications Commission  
Room 230  
2000 M Street, NW  
Washington, DC 20554

Lawrence E. Strickling, Chief  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, NW, Room 500  
Washington, DC 20554

Kurt Schroeder  
Federal Communications Commission  
Room 230  
2000 M Street, NW  
Washington, DC 20554

John F. Raposa  
GTE Service Corporation  
HQE03J27  
600 Hidden Ridge  
POB 152092  
Irving, TX 75012-2092

Robert M. Lynch  
Roger Toppins  
Jeffrey B. Thomas  
Southwestern Bell Telephone Company  
One Bell Plaza, Room 3043  
208 South Akard Street  
Dallas, TX 75202

Wendy Bluemling  
The Southern New England  
Telephone Company  
310 Orange Street  
New Haven, CT 06510-1806

Gail L. Polivy  
GTE Service Corporation  
Suite 1200  
1850 M Street, NW  
Washington, DC 20036

James T. Hannon  
US West, Inc.  
Suite 5100  
1801 California Street  
Denver, CO 80202

Mark C. Rosenblum  
Richard H. Rubin  
AT&T Corporation  
295 North Maple Avenue  
Room 3252I3  
Basking Ridge, NJ 07920

Carl W. Northtrop  
Emmett A. Johnston  
Paul, Hastings, Janofsky & Walker  
1299 Pennsylvania Avenue, NW  
10<sup>th</sup> Floor  
Washington, DC 20004-2400

Alan Buzacott  
MCI WorldCom, Inc.  
1801 Pennsylvania Avenue, NW  
Washington, DC 20006

Danny E. Adams  
Steven A. Augustino  
John J. Heitmann  
Kelley Drye & Warren, LLP  
1200 19<sup>th</sup> Street, NW, Suite 500  
Washington, DC 20036-2423

Dana Frix  
Pamela S. Arluk  
Swidler & Berlin  
3000 K Street, NW, Suite 300  
Washington, DC 20007-5116

Michael J. Shortley III  
Frontier Corporation  
180 S. Clinton Avenue  
Rochester, NY 14646

Glenn B. Manishin  
Michael D. Specht  
Blumenfeld & Cohen  
Technology Law Group  
1615 M Street, NW, Suite 700  
Washington, DC 20036

Mary L. Brown  
George S. Ford  
MCI Telecommunications  
1801 Pennsylvania Avenue, NW  
Washington, DC 20006

Judith St. Ledger-Roty  
Wendy I. Kirchick  
Kelley Drye & Warren, LLP  
1200 19<sup>th</sup> Street, NW, Suite 500  
Washington, DC 20036-2423

Rachel J. Rothstein  
Cable & Wireless, Inc.  
8219 Leesburg Pike  
Vienna, VA 22182

Howard J. Symons  
Sara F. Seidman  
Yaron Dori  
Mintz, Levin, Cohn, Ferris, Glovsky  
and Popeo, PC  
701 Pennsylvania Avenue, NW  
Suite 900  
Washington, DC 20004-2608

James M. Smith  
Excel Telecommunications, Inc.  
1133 Connecticut Avenue, NW  
Suite 750  
Washington, DC 20036

Gary L. Mann  
IXC Long Distance, Inc.  
1122 Capital of Texas Highway South  
Austin, TX 78746

Brad E. Mutschelknaus  
Steven A. Augustino  
Kelley Drye & Warren, LLP  
1200 19<sup>th</sup> Street, NW, Suite 500  
Washington, DC 20036-2423

Lawrence G. Malone  
New York State Dept. of Public Service  
Three Empire State Plaza  
Albany, NY 12223-1350

Robert L. Hoggarth  
Personal Communications Industry  
Assn.  
500 Montgomery Street  
Suite 700  
Alexandria, VA 22314

Scott Blake Harris  
Kent D. Bressie  
Harris, Wiltshire & Grannis, LLP  
1200 18<sup>th</sup> Street, NW, Suite 1200  
Washington, DC 20036

Thomas Gutierrez  
J. Justin McClure  
Lukas, Nace, Gutierrez & Sachs  
1111 19<sup>th</sup> Street, NW, Suite 1200  
Washington, DC 20036

Thomas K. Crowe  
Law Offices of Thomas K. Crowe, PC  
2300 M Street, NW, Suite 800  
Washington, DC 20037

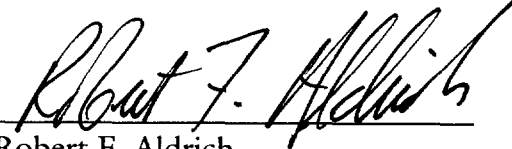
Micheal K. Kellogg  
Aaron Panner  
Kellogg Huber Hansen Todd & Evans  
1301 K Street, NW  
Suite 1000 West  
Washington, DC 20005

Neil M. Peretz  
PocketScience Inc.  
2075 de La Cruz Boulevard  
Suite 200  
Santa Clara, CA 95050

Leon M. Kestenbaum  
Jay C. Keithley  
H. Richard Juhnke  
Sprint Corporation  
1850 M Street, NW, 11<sup>th</sup> Floor  
Washington, DC 20036

Richard S. Whitt  
WorldCom, Inc.  
1120 Connecticut Avenue, NW  
Suite 400  
Washington, DC 20036

ITS  
1231 20<sup>th</sup> Street, NW  
Washington, DC 20036

  
Robert F. Aldrich